

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)

v.)

LEE BOYD MALVO)

CRIMINAL No. 102888

FILED
CRIMINAL

03 APR 16 AM 11:55

JOHN E. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

**RESPONSE TO MOTION FOR FULL AND COMPLETE DISCLOSURE OF
DISCOVERY MATERIALS**

The Commonwealth will respond in the order of the numbered paragraphs in the motion.

1,2,3. The Commonwealth agrees with the statements in paragraphs 1, 2, and 3.

4. Prior to the entry of this court's discovery order, the Commonwealth, on January 8, 2003, and in response to a Juvenile District Court Order containing the same requirement as paragraph 1, provided to the defense the substance of the oral statements made by this defendant to the Fairfax County Police and the FBI. We do not know who released the "summary", but counsel for the defendant John Muhammad has had a copy since on or about March 21, 2003. The so called "summary" contains the substance of the oral statements provided to this defendant on January 8, 2003.

5. There is not now, nor has there ever been, a videotape of the Fairfax interrogation of Lee Boyd Malvo.

6. The Commonwealth provided all discovery materials prior to April 14, 2003 – in excess of one thousand pages of documents, transcripts, lab reports, etc., seven audiotapes of the defendant's interviews with Fairfax and Prince William police, and countless photos on discs of numerous crime scenes.

The defense says "The defense fully complied." We don't know whether they did or not. The Commonwealth received only a letter in which they said the defense has no alibi.

7a. The only known videotape of a meeting between Lee Boyd Malvo and a law enforcement agent was provided to the defense on April 14, 2003. (Item 17)

7b. The Commonwealth has provided to the defense all exculpatory evidence of which it is aware.

7c. The defense is not entitled to memoranda or other internal documents made by agents in connection with the investigation of the case. 3A:11(b)(2) of the Rules of the Supreme Court of Virginia. They are entitled to the substance of oral statements given to law enforcements officers. They have received those. They are clearly not entitled to police officers' notes. Spencer v. Commonwealth, 238 Va. 295 (1989).

7d. The defense now has seven audiotapes of the interview in Fairfax County. There are no more. There never was a videotape and there is none now.

7e. The defense now has all of the interviews (both the transcripts and the recordings of recorded interviews) or the substance of all oral statements made by the defendant of which the Commonwealth is aware. For one interview they have the videotape. The Commonwealth is aware of no other "efforts" to take a statement.

Respectfully submitted,

ROBERT F. HORAN, JR.
Commonwealth's Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Defendant's Motion was mailed, postage prepaid, and faxed to Michael Arif, Counsel for Defendant, 8001 Braddock Road, # 105, Springfield, Virginia 22151 and Craig Cooley, Counsel for the Defendant, 3000 Idlewood Avenue, P.O. Box 7268, Richmond, Virginia 23221 this 16th day of April, 2003.

ROBERT F. HORAN, JR.
Commonwealth's Attorney